

No. 00-1918

V.

Appeals from the United States
District Court for the District of
Minnesota.

[UNPUBLISHED]

BNSF Corporation, a Minnesota
corporation; BNSF Corporation, a
North Dakota corporation,

Third Party Defendants.

No. 00-2335

William S. Purdy, an individual,

Plaintiff-Appellant,

v.

Burlington Northern Santa Fe
Corporation, a Delaware corporation;
Burlington Northern and Santa Fe
Railway Company, a Delaware
corporation;

Defendants-Appellees,

Charles Shewmake; Orest Dachniwsky;
Paul Hoferer; John Does, 1-200,

Intervenors Defendants.

Burlington Northern Santa Fe
Corporation, a Delaware corporation;
Burlington Northern and Santa Fe
Railway Company, a Delaware
corporation,

Burlington Northern and Santa Fe	*
Railway Company, a Delaware	*
corporation,	*
	*
Third Party Plaintiffs,	*
	*
v.	*
	*
BNSF Corporation, a Minnesota	*
corporation; BNSF Corporation, a	*
North Dakota corporation,	*
	*
Third Party Defendants.	*

Submitted: October 17, 2001

Filed: October 24, 2001

Before McMILLIAN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

William S. Purdy worked as a locomotive engineer for Burlington Northern Railroad. In 1989, Purdy was involved in a train accident that severed the legs of a coworker. The next year, the Railway terminated Purdy's employment because of insubordination. Purdy has been disabled since then because of post-traumatic stress disorder. In 1993, Purdy started using the service mark, "BNSF," an abbreviation for "Bringing Now Safety First," to promote railroad safety, and established Internet websites using the mark. He formed Minnesota and North Dakota corporations named BNSF Corp. In 1994, Burlington Northern Railroad merged with Sante Fe Railway and created a Delaware corporation, BNSF Corp. The combined railways began using the abbreviation "BNSF" across the country. After the Interstate

Commerce Commission approved the merger in 1995, the corporation changed its name to Burlington Northern Sante Fe Corporation and began using the logo “BNSF” on corporate communications, advertising, promotions, and the sides of its locomotives. In 1996, the U.S. Patent and Trademark Office granted Purdy use of the service mark “BNSF.” In 1998, a federal court in Texas ordered the service mark void ab initio and ordered the patent office to cancel the registration. The Fifth Circuit affirmed. Purdy then brought this action in federal court to determine his rights to the service mark “BNSF” under common law.

The district court* granted partial summary judgment in the Railway’s favor, finding the Railway had made the first bona fide use of the mark. While Purdy’s use of the mark in interstate and intrastate commerce was sporadic, de minimus, and not directed at a relevant purchasing public, the Railway had deliberately and continuously used the mark “BNSF” in association with the Railway’s operation in the ordinary course of business. Besides the service mark issue, several Railway employees had intervened to challenge Purdy’s publication of their social security numbers and salaries on his website after the information was erroneously sent to Purdy’s site by a Railway budgeting employee. The district court issued a temporary restraining order enjoining Purdy from publishing the social security numbers and the salary information if attached to the employees’ names. The court then transferred the ownership of Purdy’s Internet domain names to the Railway and permanently enjoined Purdy from using the “BNSF” mark in any website address or manner that would cause confusion.

On appeal, Purdy asserts he has proper rights to use the service mark and the injunction violates his rights to free speech under the First Amendment. Having carefully reviewed the record, the parties’ briefs, and the applicable law, we conclude

*The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.

the district court properly decided the case. Because an extended opinion would serve no useful purpose, we affirm on the basis of the district court's orders. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.